

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6710 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER GUJARAT STATE TRANSPORT CORPORATION

Versus

JAYANTILAL GANDESHBHAI CHAMAR

Appearance:

MR KN RAVAL for Petitioner
RESPONDENT SERVED

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 11/04/2000

ORAL JUDGEMENT

This petition is filed by Gujarat State Road Transport Corporation ('Corporation' for short) for quashing and setting aside an award passed by the Presiding officer of the Labour Court, Ahmedabad in Reference (LCA) No.340 of 1984 on 30th July, 1986. By the said award, the Reference was partly allowed and order of dismissal passed against the respondent workman on July 20, 1982 was set aside and he was directed to be reinstated on his original post with continuity of service without back wages.

The case of the Corporation was that the respondent was

working as a conductor with the Corporation at Sanand depot. He was on duty on Dohad-Ahmedabad route. During the surprise checking enroute, near Godhra, it was found that the respondent had not issued tickets to a group of two passengers even though fare was collected and recovered from them by the respondent. After considering the defence and explanation and on the basis of materials recorded at the inquiry, he was found guilty and was dismissed from service vide an order dated July 20, 1984. The workman raised an industrial dispute. As no reconciliation could be arrived at, the matter was referred to the Labour Court, Ahmedabad and the Labour Court, as stated above, granted reinstatement to the respondent without back wages but continuity of service was granted. The said award is challenged by the Corporation by filing the present petition.

Rule was issued on 22nd January, 1991. Though the respondent was served, nobody appears on his behalf.

Mr. Raval, learned advocate for the Corporation contended that there is an error apparent on the face of record committed by the Labour court in not taking into account the relevant facts and circumstances as also the finding recorded at the departmental inquiry. He submitted that inquiry was held to be legal, valid and in accordance with law. At the said inquiry, workman was found to be guilty. It was specifically observed in the departmental proceedings that the respondent had collected the amount of Rs. 33.60 from two passengers but had not issued tickets and thereby he had misappropriated the said amount. He was asked to deposit the said amount which was also subsequently done by him. In these circumstances, it was not open to the Labour Court to set aside the finding recorded at the inquiry and order reinstatement to the respondent.

Mr. Raval strenuously urged that a factor which weighed with the Labour Court in setting aside the finding recorded at the departmental inquiry and in granting reinstatement to the workman was that passengers from whom fare was collected were not examined. Mr. Raval submitted that apart from the fact that it is in the realm of reappreciation of evidence, it is not correct even as a proposition of law that if passengers are not examined, the charge levelled against an employee cannot be said to have been proved. It will be profitable in this connection to refer to a decision of the Supreme Court in State of Haryana vs. Rattan Singh, AIR 1977 SC 1512. In that case also, passengers who travelled in the bus belonging to Haryana Roadways were not examined. It

was contended on behalf of the conductor that since passengers were not examined, the case was of "no evidence" and hence, no action could be taken in the absence of statements of passengers. Holding that strict rules of procedure and evidence are not applicable to such inquiry, the Apex Court held that on the basis of other evidence, in the departmental proceedings, inquiry officer can come to a conclusion whether the allegations levelled against an employee can be said to be proved or not. In the instant case, a finding was recorded that the respondent was a conductor on the route in question when his bus was checked in which two passengers were found to have already paid the amount of fare to the conductor but the conductor did not issue tickets to them and the said allegation was held proved during the inquiry proceedings. In these circumstances, in my opinion, the Labour Court has committed an error of law and of jurisdiction in setting aside the order of dismissal and in granting reinstatement to the respondent.

The question then is regarding final order. Mr. Raval fairly conceded that the award was passed in July 1986. Petition was filed in 1989 in which Rule was issued, in 1991. No interim relief, however, was granted. He also stated that in all probability, the respondent must have been reinstated and though he is served, he is not appearing in the matter. He, therefore, submitted that appropriate order on quantum of punishment may be passed considering the facts and circumstances.

In my opinion, the petition deserves to be partly allowed. It is directed that in the facts and circumstances, reinstatement which has been granted by the Labour Court is not disturbed, but in the light of the misconduct levelled and proved against the respondent workman and when I am holding that the approach adopted by the Labour Court was not on consonance with law, in special facts and circumstances, I direct that the respondent workman should be placed in the the initial pay scales available to a conductor. Rule is made absolute to the aforesaid extent. No order as to costs.

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